

1700 G Street NW,
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October 1, 2018

Via ECF

Hon. Colleen McMahon
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Court House
500 Pearl Street, Chambers 2550
New York, New York 10007

Re: Status Update and Request for Clarification (Consumer Financial Protection
Bureau v. NDG Financial et al., Case No. 15-cv-5211 (CM) (RWL)

Dear Chief Judge McMahon:

The Bureau writes in response to the Court's September 25, 2018 Order requesting a report on the status of this litigation. ECF No. 180. The Bureau intends to file a motion for default judgment against the remaining defendants in this litigation. We respectfully request that the Court keep the matter open pending receipt of this additional briefing.

The Bureau also respectfully requests clarification regarding its compliance with the Court's Individual Rule of Practice IV.F.1. The Rule sets forth several prerequisites to filing a motion for a default judgment, including notifying the defendants that default judgment will be entered against them if they do not appear, and serving that notice and a copy of the motion according to normal service of process rules. As the Court is aware, all defendants in this case have appeared and understand the consequences of their failure to participate in the litigation. Counsel for defendants Northway Broker, Ltd. and Northway Financial Corp., Ltd. (the "Maltese Defendants") withdrew from this action, submitting an affidavit from an officer stating that the Maltese Defendants did not intend to defend the action in this forum. ECF 116. The remaining defendants (the "Canadian NDG Defendants") continue to be represented by counsel in this matter and, in any event, have indicated that they are choosing to default. ECF 167 at 7.

In light of defendants' awareness of and strategic default in this litigation, the Bureau respectfully requests that it be deemed to have complied with Rule IV.F.1 by (1) mailing a copy of its Motion for Default Judgment at the time of filing to the Maltese Defendants at their last known business address in accordance with S.D.N.Y. Local Rule 55.2; and (2) serving the Motion for Default Judgment on the Canadian NDG Defendants via ECF only, since they are currently represented in this matter.

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If the Court grants the Bureau's request above, the Bureau expects that it will be able to file its motion for default judgment on or before October 15, 2018. If the Bureau is required to serve the defendants in Malta and Canada under normal service of process rules, the Bureau will file its motion as soon as possible after receiving proof that service has been effected in those countries.

Respectfully submitted,

/s/ Jessica Rank Divine

Enforcement Attorney